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BETWEEN PUBLIC AND COMMUNAL INTERESTS: A LEGALITY ISSUE OF FORCED EVICTIONS OCCURRING IN JAKARTA¹

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Abstract

Forced evictions are considered to be a "global epidemic" since they occur in several countries regardless of the state's development level. Private ownership issues and development issues are examples of rationales given for forced evictions. Under the human rights regime, all States are obliged to refrain from carrying out any evictions; moreover, all States are required to adopt measures preventing forced evictions from happening or provide the victims with legal mechanisms to challenge the policies if evictions occur. International law prohibits forced evictions and offers guidance for forced eviction triggered by development. This paper will investigate the legality of forced evictions happening in Jakarta, Indonesia, and will critically examine whether the forced evictions are in contravention of the international obligations to which Indonesia has subscribed, or whether such evictions can be justified by their being in the public interest. The author argues that in the name of development, a conflict of interest may exist between the larger public interest and the interest of the evicted community. Since forced evictions are associated with violations of human rights, especially the right to adequate housing, the interests of both the public and the community should be given more attention, particularly where forced evictions cannot be avoided.

Keywords: forced evictions, public interests, community interests, Indonesia

Abstrak

Pengusuran paksa sering disebut sebagai peristiwa yang merupakan endemik global, dimana pengusuran paksa terjadi di banyak negara tanpa memandang tingkat pembangunan negara tersebut. Pengusuran terjadi baik di negara miskin maupun di negara-negara maju dan kaya. Latar belakang terjadinya pengusuran paksa antara lain adalah isu kepemilikan tanah oleh pihak swasta maupun karena pembangunan. Di bawah rejim hak asasi manusia, negara negara mempunyai kewajiban untuk menahan diri untuk tidak melakukan pengusuran atau dengan kata lain melakukan pengusuran dengan seminimal mungkin. Lebih jauh, negara negara juga diwajibkan untuk mengambil langkah langkah untuk mencegah terjadinya pengusuran serta menyediakan mekanisme mekanisme hukum yang dapat ditempuh bagi para korban, jika memang pengusuran paksa harus terjadi. Hukum internasional melarang pengusuran paksa. Pada level internasional terdapat pula pedoman bagi pelaksanaan pengusuran paksa yang terjadi karena proses pembangunan. Artikel ini menganalisa legalitas pengusuran paksa yang terjadi di Kampung Pulo Jakarta. Secara kritis, artikel ini menganalisa alasan pengusuran paksa apakah dapat dijustifikasi dengan alasan kepentingan umum dan apakah prosedur pengusuran yang terjadi telah sesuai dengan hukum internasional sebagaimana telah diratifikasi oleh Pemerintah Indonesia. Penulis berpendapat bahwa didalam melaksanakan pembangunan nasional, pertentangan kepentingan umum serta kepentingan komunitas yang tergusur sering terjadi pertentangan, sehingga keduanya perlu diperhatikan serta harus dilindungi apabila pengusuran tidak dapat dihindarkan.

Kata Kunci: pengusuran paksa, kepentingan umum, kepentingan masyarakat, Indonesia

¹ This article is a revised and an updated version of the first draft presented at the *Congres Onderzoeksprogramma, Public Trust & Public Law, "De wisselwerking tussen recht en vertrouwen bij toezicht en handhaving"*, held by the Faculty of Law, University of Groningen, the Netherlands, on 11 December 2015. The first version's title was "Forced Evictions between Public and Communal Interests: an Issue of Accountability under the Indonesian Legal System" (a case study on eviction in Kampung Pulo, Jakarta)

I. INTRODUCTION

Modernization and globalization have driven all States in the world to foster the development of both infrastructure and superstructure. Development has irrefutable and, to a certain extent, adverse effects. For example, a gentrification process or the urban expansion of a city will affect impoverished people since these practices eliminate shantytowns; thus, inhabitants living in such areas will be evicted. As has been observed, development processes can uproot people from their home, land, and communities, particularly if the policymaking renders the safety of the residents.¹

The number of forced removals occurring in both developing and developed countries has been increasing.² As a result, massive numbers of victims, i.e., individuals and families have been displaced from their homes and lands without being provided adequate alternative accommodation or shelter and legal protection.³ Forced evictions can happen in both rural and urban areas. Several common reasons serving as the basis for evictions are gentrification, renewal of building, preparations for mega projects, such as sports events, highways, dams, land grabbing, and mining, or any other exploration activities.⁴

Not all forced evictions are prohibited by international human rights law. In particular cases, evictions are unavoidable, such as an expulsion of tenants living in a derelict building or a disaster area. Such evictions may come under the definition of an exception to the prohibition of forced eviction and as such would be considered lawful expulsions, since the primary reason for these types of evictions is to protect the community. States, at the domestic level, should adopt rules to regulate such activities to protect the evicted communities. However, as a part of “human rights mainstreaming” both national regulations and national policies should be in conformity with international human rights standards.⁵

As a developing country, Indonesia has experienced massive urbanization over the years. People migrated from villages to cities and established informal settlements on the riverbanks or in other places that were not suitable for human settlements. As a result, forced evictions of people living in informal settlements have become a long-standing problem in Indonesia.⁶ In addition, evictions as a result of development

¹ Peter Penz et. al., *Displacement by Development: Ethics, Rights and Responsibilities* (Cambridge: Cambridge University Press, 2011), p. 1.

² United Nations Human Settlements Programme (UN HABITAT), *Forced-Evictions-Toward Solutions?, Second Report of the Advisory Group on Forced Evictions to the Executive Director of UN-HABITAT* (Kenya: UN Habitat, 2007), pp. iv, 47 and 97.

³ Gautam Bhan, *In the Public's Interest: Evictions, Citizenship, and Inequality in Contemporary Delhi* (USA: University of Georgia Press, 2016), pp. 96--97. See also recent studies on evictions in European countries conducted by the Human European Consultancy, School of Law, National University of Ireland, Galway, FEANTSA. *Pilot Project: Promoting Protection of the right to housing - Homelessness Prevention in the Context of Evictions*. VT/2013/056. Brussels: European Union, 2016, <http://www.feantsa.org/download/ke-02-16-339-en-n-174396796745918750.pdf> accessed: 16 April 2018.

⁴ Paul D. Ocheje, “In the Public Interest: Forced Evictions, Land Rights and Human Development in Africa,” *Journal of African Law* 51, no. 2 (2007): 173–214; see also Nathan Einbinder, *Dams, Displacement and Development: Perspectives from Río Negro, Guatemala*, Springer Briefs in Latin American Studies (Switzerland: Springer, 2017), pp. 19–28.

⁵ Damila S. Olawuyi, “Mainstreaming Human Rights under National and International Law: Legal and Epistemic Question,” *Indonesia Law Review* 3, no. 3 (September-December 2013): 212–235

⁶ Human Rights Watch, “Condemned Communities Forced Evictions in Jakarta,” Volume 18, No. 10 (C), 2006, pp. 8–17, <https://www.hrw.org/reports/2006/indonesia0906/indonesia0906web.pdf>, accessed 20 November 2015.

projects have also occurred.

Poverty has severely hit Indonesia as 28 million people⁷ out of 251 million people still live below the poverty line.⁸ Java Island has become overpopulated as a consequence of both high migration from villages to large cities and massive urbanization. As a result, land and houses are scarce and unaffordable, which forces poor people to live in inadequate housing, *e.g.*, under bridges, on riverbanks, and among ex-railway tracks. These types of settlements are categorized as informal or “illegal”; thus, they are vulnerable to eviction.

In 2006, the Jakarta Government forcefully evicted people living in illegal settlements. In the same year, at least 15 cases of forced eviction occurred.⁹ The security forces demolished homes and destroyed properties with little notice, without due process, and with unfair compensation. At that time, people living in slum areas feared that government security forces would come and bulldoze their homes at any given moment.¹⁰ The reasons for justifying the evictions were the need to develop several infrastructure projects and to eradicate the slums.¹¹

In 2015, 1,500 households living in informal settlements along the banks of the Ciliwung River had also been evicted.¹² These households were blamed for the silting of the river, which subsequently caused annual floods in Jakarta that resulted in enormous economic loss. Forced evictions were still occurring in 2016. In response to these events, the government wanted to revitalize the function of the river; therefore, the riverbanks had to be cleared of slums and informal settlements. The Government of DKI Jakarta claimed that such clearing could prevent floods from occurring in the future. In addition to the revitalization of the Ciliwung River, the government plans to add green areas to the city, such as a park or forest.

The public interest is likely to be the foremost reason given for the numerous forced evictions happening in Indonesia. However, when carrying out an eviction, the government should also take into consideration the communal interest. Forced removal in the name of the public interest should not infringe upon or violate the community’s interest. In a massive expulsion, the public interest and the community’s interest (*i.e.*, that of the evictees) will be in conflict, in which case a consideration of the interests of each group as well as the approaches taken in conducting the eviction will determine the legality of a forced eviction. Also, in the case of a necessary clearance, the government should be held accountable for its citizens, particularly in providing redress and remedy for any human rights violations triggered by the evictions.

This paper will investigate the legality of forced evictions that occurred in Jakarta, Indonesia. It will critically examine the reason of “public interest” proffered by the

⁷ The National Statistic Agency, “Profil Kemiskinan di Indonesia [Poverty Profiles of Indonesia],” Maret 2016, *Berita Resmi Statistik*, No. 66/07/Th. XIX, 18 Juli 2016, https://www.bps.go.id/website/brs_ind/brsInd-20160718115646.pdf, accessed 10 July 2017.

⁸ The UN Habitat website, http://urbandata.unhabitat.org/explore-data/?countries=ID&indicators=slum_proportion_living_urban.population.urban_population_cities, accessed 16 April 2018. Based on the national census in 2010, the National Statistic Agency also predicted that the Indonesian total population in 2015 will reach 255 417 00 million, see <http://www.bps.go.id/>, accessed 20 November 2015.

⁹ Human Rights Watch, “Condemned Communities Forced Evictions”

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Reporter, “Violent Eviction of Poor in Kampung Pulo,” *The Jakarta Post* (20 August 2015), available at <http://www.thejakartapost.com/news/2015/08/20/violent-eviction-poor-kampung-pulo.html>, accessed 20 November 2015.

authorities as to whether the forced evictions are in contravention of the international obligations to which Indonesia has subscribed or whether such evictions can be justified for the sake of a wider public interest.

In order to provide a clear analysis and explanation, this paper will be structured as follows. While part one above has introduced the topic and the background of the problem, part two provides a description of the prohibition and limitation of forced evictions both under international law and Indonesian law. The third part deals with the conflict between the wider public interest and the evictees' interest as a community; following this, part four provides an examination of the legality of the forced evictions. Eventually, part five will provide a conclusion and a set of recommendations.

II. PROHIBITION AND LIMITATION OF FORCED EVICTIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW AND INDONESIAN LAWS

Under international human rights law, forced evictions are considered to be violations of human rights. Moreover, the UN Commission on Human Rights emphasizes forced displacement as being "a gross violation of human rights, particularly the right to adequate housing."¹³ By the same token, the United Nations Committee on Economic, Social, and Cultural Rights ("the CESCR") defines forced evictions as "the permanent or temporary removal against the will of individuals, families and/or communities from their homes and/or land, without the provision of or access to appropriate forms of legal protection."¹⁴ A forced eviction can also mean any eviction carried out in contravention of international law and standards, regardless of whether the evictees have legal entitlement to the land or houses, and despite whether the expulsion is carried out with force.¹⁵ It should be noted that the lack of a legal basis for the ownership of land or houses as such cannot be the reason to evict people from their homes.¹⁶

Based on these definitions, one can observe that displacement is permissible if it is not against the will of the individuals affected and if the government provides emergency shelter as well as legal protection for them. In the General Comment No. 7 on Forced Evictions, the CESCR has established a list of procedures for so-called unavoidable forced evictions to ensure the human rights of the victims. These requirements are as follows:¹⁷

- 1) providing dialogs between the government and affected communities
- 2) providing an adequate and reasonable warning about the schedule of

¹³ United Nations, Commission on Human Rights, *Resolution 1993/77 on Forced Evictions*, (10 March 1993), para.1; see also United Nations, Sub-Commission on the Protection and Promotion of Human Rights, *Resolution 1998/9 on Forced Evictions*, E/CN.4/SUB.2/RES/1998/9 (20 August 1998), para.1; United Nations, Commission on Human Rights, *Resolution 2004/28 on Prohibition of Forced Eviction*, E/CN.4/RES2004/28 (16 April 2004), para. 1.

¹⁴ United Nations, *Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7 on the Right to Adequate Housing (art.11.1): Forced evictions*, E/1998/22 (20 May 1997), para. 3.

¹⁵ Raquel Rolnik, *Report of the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, Addendum, Mission to Indonesia, UN Doc. A/HRC/25/54/Add.1, (26 December 2013), para. 56.

¹⁶ Human Rights Watch, "Condemned Communities Forced Evictions," p. 30.

¹⁷ United Nations, Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7, op. cit.*, para. 15.

eviction

- 3) the aims of the eviction should be made available to the public as well as information on alternative land or houses that will be provided to the evictees
- 4) the government officials should be present at the time of the eviction
- 5) the government should accurately identify the affected community
- 6) evictions cannot be executed in bad weather or at night without consent from the people affected by the evictions
- 7) the government should ensure the availability of legal remedies
- 8) the availability of provision of legal aid in case of the need of seeking redress before the court should be ensured.

In the case of impending evictions, States should be in compliance with the related international human rights law as well as the general principles of reasonableness and proportionality stipulated in the General Comment No. 16 of the Human Rights Committee in Article 17 of the ICCPR. These principles underline the fact that interference with one's home is only permitted in certain circumstances in accordance with the Covenant's purposes, which are to protect the civil and political rights of the human being, and any interference should be reasonable and should be based on legislation. Similar requirements are also found in the field of economic, social, and cultural rights. Article 4 of the International Covenant on Economic, Social and Cultural Rights ("the ICESCR") affirms that limitation is possible and is subject to certain conditions, such as it should be determined by laws compatible with the nature of human rights and serve the purposes of promoting the general welfare of human beings in a democratic society.¹⁸

Moreover, the UN Commission on Human Rights has adopted the Basic Principles and Guidelines on Development-Based Evictions and Displacement.¹⁹ This document emphasizes the obligation of States to refrain from forced evictions and to protect their people if such activities occur.²⁰ Moreover, it highlights the interdependence of the civil right to non-interference of home and private life with the right to adequate housing, in terms of eviction.²¹ Similar to the General Comment No. 7 on Forced Evictions, the Guidelines applaud "legal eviction."²² To be legally accepted, an eviction should be authorized by law. Moreover, it should be carried out in accordance with international human rights standards and undertaken solely for the purpose of promoting "the general welfare." The "general welfare," according to the Guidelines, refers to the steps taken by States to uphold their international human rights obligations, especially with regard to ensuring the human rights of the most vulnerable. Forced removal should be reasonable and proportional, and should be regulated so as to ensure full and fair

¹⁸ *Covenant on Economic, Social and Cultural Rights*, New York, 16 December 1966, *United Nations Treaty Series*, Vol. 993, No. 14531, art. 4. Hereinafter referred as "ICESCR"

¹⁹ United Nations, General Assembly, Implementation of General Assembly Resolution 60/251 of 15 March 2006, entitled "Human Rights Council", *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, Miloon Kothari, Annex I "Basic Principles and Guidelines on Development-Based Evictions and Displacement", A/HRC/4/18 (5 February 2007), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/106/28/PDF/G0710628.pdf?OpenElement>, accessed 16 April 2018.

²⁰ *Ibid.*, para. 1.

²¹ *Ibid.*, para. 2.

²² *Ibid.*, para. 21.

compensation and rehabilitation. Eventually, it should be conducted in line with the present guidelines. States are also strongly advised to adjourn a planned eviction if, on the date of execution, related cases are still under examination by the courts.²³

Further, this soft law document underscores several measures that should be adopted by States in the event of dismissal. The measures are divided into three stages: anterior removal, removal during the displacement, and removal after the displacement. The actions to be carried out prior to the clearance are as follows: giving appropriate notices to affected communities, and effectively discussing the plan with those communities, including the strategy in place to protect vulnerable groups. Moreover, the government should: provide a reasonable time period for public criticism, review, or objection; hold public hearings; and provide the community with the opportunity to challenge the plan before authorized institutions.²⁴

During the eviction,²⁵ States must ensure that their representation and impartial observers are present to supervise and ensure that the dismissal is carried out within the framework of the human rights principle. If States employ forces, they should not use them excessively and should respect the principle of necessity and proportionality. Eviction must not be carried out in inhospitable weather or during other crucial events in the community; for example, during religious days and during school examinations. No violence can occur at the time of displacement; therefore, States and their agents should ensure that no one is subjected to any outbreak of violence. In addition, during the execution process, States must refrain from forcing the affected persons to demolish their own dwellings or other structures. Avoiding demolition will enable the evacuees to salvage their assets and properties.

Further, the Guidance stipulates a set of obligations for States that should be fulfilled in the period post removal. During this time, States are obliged to provide fair compensation and sufficient alternative accommodation, or restitution when feasible. The compensation scheme should be carried out in a non-discriminatory manner and should be immediately conducted upon the evictions.²⁶ According to the international instruments mentioned above, forced evictions are strictly prohibited as they violate human rights. However, if an eviction is carried out with thorough consideration as well as preparation, then to a certain extent, displacement can be legally allowed.

In addition to the international standards on forced eviction, Indonesian domestic laws guarantee the right to adequate housing as well as protection from evictions. Article 28 H (1) of the Constitution states that Indonesian citizens are entitled to live in physical and spiritual prosperity, to have a home, and to enjoy a good and healthy environment, and shall have the right to obtain medical care.²⁷ This Article does not however state a right to housing per se. Nevertheless, it stipulates "*hak untuk bertempat tinggal*," and if this phrase is translated literally into English it means "a right to a place to live." In this regard, the author prefers to use the term "the right

²³ *Ibid.*, para. 36.

²⁴ United Nations, General Assembly, Annex I "Basic Principles and Guidelines on Development-Based Evictions and Displacement", para. 37.

²⁵ *Ibid.*, paras 45–5.

²⁶ For the detailed obligation of States after the eviction see the Guidelines, *ibid.*, paras 52–58.

²⁷ Indonesia, *The 1945 Constitution of the Republic of Indonesia*. This article was adopted in the Constitution on the second amendment in 2001.

to housing²⁸ or right to have a home²⁹,” which is broader in terms of concept and is still within the meaning of the right to have a place to stay as the legislator intended it. In relation to the right to housing, the constitution also protects the right to the protection of family and property.³⁰ These two articles show that the protection of the right to housing does not merely protect housing as a building, but also housing as a home, as a place to live, with or without family.

In addition to the Constitution, the Indonesian Human Rights Act No. 39/1999 also protects the right to housing. Article 40 recognizes the right to a place to live as well as the right to a decent life. The right to property and protection of family life are also protected. Moreover, under Law No. 1/2011 on Housing and Settlement, the government guarantees that every citizen has the right to occupy and/or enjoy and/or own a decent house in a healthy, safe, harmonious, and orderly environment.³¹

In the field of civil rights, both the Indonesian Constitution and the Human Rights Act recognize the right of an individual to the protection of himself, his family, his dignity as well as his property, and the right to freedom from fear. These rights are stipulated in nearly similar wording in Article 28G(1) of the Constitution, and in Article 29(1) of the Human Rights Act. Furthermore, the Constitution stipulates that the property of the people cannot be upheld arbitrarily.

Besides these two domestic laws, Indonesia is a party to numerous international human rights instruments recognizing the right to adequate housing. These include the most prominent instrument, i.e., the International Covenant on Economic, Social and Cultural Rights (“the ICESCR”).³² The right to adequate housing acknowledged in this Covenant is a part of the right to an adequate standard of living, which includes adequate food, clothing, and housing.³³ Similar to other economic, social, and cultural rights, the realization of the right to housing is subjected to progressive realization.³⁴ The state is obliged to take steps toward such realization, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources and by all appropriate means, including particular

²⁸ The right to housing concerns not merely living inside four walls and under a roof but living somewhere in peace and with dignity; therefore housing provision should be adequate enough to guarantee the dignity of human beings.

²⁹ The concept of home is even broader than house, as it involves the definition of a house as a building, as a property, and as a relationship between the house and its inhabitants, as well between inhabitants and their society. Also, home is a matter of privacy, which falls under the ambit of civil rights. Thus, the concept of home encompasses three types of rights: economic, social, and civil rights.

³⁰ Indonesia, the 1945 Constitution, art. 28G (1).

³¹ Indonesia, *Undang-Undang tentang Perumahan dan Kawasan Pemukiman (Law Regarding Housing and Settlement Areas)*, UU No. 1 Tahun 2011, LN No. 7 Tahun 2011 (Law Number 1 Year 2011, SG No. 7 Year 2011), arts. 5(1), 19 and 129 (a).

³² In addition to the ICESCR, Indonesia is also a party to a number of international human rights instruments which also recognize the right to housing, i.e., the Convention on the Elimination of all Forms of Discriminations Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All forms of Racial Discrimination (CERD), the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), the Convention on the Rights of People with Disabilities. However, unlike the ICESCR, which targets all individuals and groups, these instruments target specific groups; such as women, minority groups, children, migrant workers, and persons with disabilities; thus they will not be discussed in this paper.

³³ ICESCR, art. 11 (2).

³⁴ *Ibid.*, art. 2 (1).

steps toward the adoption of legislative measures.³⁵ The adoption of such measures is expected to achieve the full realization of the rights recognized in the ICESCR.

Moreover, Indonesia is also party to the International Covenant on Civil and Political Rights ("the ICCPR") that protects and guarantees the rights of people from "arbitrary or unlawful interference with his privacy, family, home or correspondence."³⁶ Intrusion refers to any action that arbitrarily disturbs the cohesion and situation of privacy, family life, and other elements related to that. Forced eviction might fall under the criteria of interference. The types of rights protected under this Covenant are categorized as civil and political rights. Hence, interference in the form of evictions could violate a very broad range of rights from civil and political rights to economic, social, and cultural rights.

Indonesia has not yet enacted an anti-eviction law or guidance on eviction either at national or local levels. Thus, observing that Indonesia is bound to several international human rights instruments, it has adopted domestic legislation affirming the right to housing; therefore, the Indonesian government should indeed respect international principles when engaging a displacement. By receiving international obligations enshrined in international law, the government of Indonesia is accountable to the human rights institutions established by international law. Moreover, the government is accountable to other States that are party to international treaties, and of utmost importance is that it is accountable to the public for its actions and policies.

III. PUBLIC INTEREST V. COMMUNITY INTEREST

The term "public interest" has been widely used in various disciplines, including in the legal context. However, the meaning of this concept is uncertain and varies according to its context and subjects.³⁷ Although the term "public interest" has been used in several fields and its meaning varies across societies according to the various rules operating within different communities,³⁸ Feintuck noted that the varying definitions of "public interest" share a few common elements.³⁹ These elements are as follows: the notion of a community,⁴⁰ the function to secure the development and cohesion of communities,⁴¹ a collection of individual interests,⁴² and the relation to general welfare.⁴³ Ultimately, public interests relate to human rights values, especially

³⁵ *Ibid.*

³⁶ *International Covenant on Civil and Political Rights*, New York, (16 December 1966), *United Nations Treaty Series*, Vol. 999, No. 14668, art. 17. Hereinafter referred as "ICCPR"

³⁷ A. Ogus, *Regulation: Legal Form and Economic Theory* (Oxford: Clarendon, 1994), p. 29. cited in Mike Feintuck, *The Public Interests in Regulation* (Oxford: Oxford University Press, 2004), p. 34.

³⁸ *Ibid.*

³⁹ *Ibid.*, p. 38.

⁴⁰ G. Niemayer "Public Interest and Private Utility" in *Nomos V: The Public Interest*, edited by C. J. Friederich (New York: Atherton Press, 1962) cited in Feintuck, *The Public Interests*, p. 38. This term was criticized by Virginia Held (1970) who considered the negative effect of using the term "community", particularly in where it may clash with the term "state". The State has interests that may mirror the interests of those who have power, thus this type of public interest might become the interest of a specific group and does not entirely reflect the spirit of community.

⁴¹ J. Bell, "Public Interests: Policy or Principle" in *Law and the Public Interests*, Proceedings of the 1992 ASLP Conference, edited by R. Brownsword (Stuttgart: Franz Steiner, 1993), p. 30.

⁴² Feintuck, *The Public Interests*, p. 30; see also A. J. M. Milne, "Public Interest, Political Controversy and the Judges" in *Law and the Public Interests*. Proceedings of the 1992 ASLP Conference, edited by R. Brownsword (Stuttgart: Franz Steiner, 1993) cited in Feintuck, *The Public Interests*, p. 39.

⁴³ E. S. Griffith, "The Ethical Foundations of the Public Interest" in *Nomos V: The Public Interest*, edited

in the link between human rights and human duties.⁴⁴ All these elements show that the concept of the public interest relates to the idea of community, general welfare, human dignity, and sustainable social order within communities.⁴⁵ These elements aim to advance not only a particular group's interests, such as majority groups, but also those of future generations.⁴⁶

Therefore, the public interest has been defined as "referring to considerations affecting the good order and functioning of the community and government affairs, for the well-being of citizens."⁴⁷ Furthermore, for the purpose of clarity and lucidity, the term public interest should be defined in a regulation applicable to society. In that way, citizens would realize and understand what kinds of interests are categorized as "public." A "community interest" refers to the interests of a particular community living in a local area or a village. To a certain extent, this meaning is somewhat narrower than that of the "general interest". It is distinguishable from the public interest that plays beyond the interests of an individual or a particular group, sector, or geographical division in a community.⁴⁸ Community interests will only advance the interests of a particular group. For the purpose of the discussion in this article, the community interest refers to the interests of the evicted community versus the interests of the government acting on behalf of the public interest, which is concerned with revitalizing the function of the Ciliwung River in order to free Jakarta from future floods.

In Indonesia, all types of the right to property, including property on a particular piece of land, have a social or public function. Therefore, in certain cases people have to allow the government to expropriate their land (with compensation upon the takeover) if the land is needed to satisfy some public interest.⁴⁹ For the purpose of providing land for public interest, the central government has adopted Law No 2/2012 stipulating Land Procurement for Development in the Public Interest. It rules several affairs categorized as public interests, as follows:⁵⁰

- a. National defense and security;
- b. Public roads (highways, tunnels, railway tracks, and train stations and their facilities);
- c. Dams, irrigation, drinking water facilities, sanitation, and sewage;
- d. Ports, airports, and bus stations;
- e. Oil and gas infrastructure;
- f. Electrical installations;
- g. Communication networks and its facilities;
- h. Landfill sites and waste processing;

by C. J. Friederich (New York: Atherton Press, 1962) cited in Feintuck, *The Public Interests*, p. 39.

⁴⁴ C. W. Cassinelli, the Public Interests in Political Ethics in *Nomos V: The Public Interest*, edited by C. J. Friederich (New York: Atherton Press, 1962) cited in Feintuck Feintuck, *The Public Interests*, p. 39.

⁴⁵ Feintuck, *The Public Interests*, p. 41.

⁴⁶ *Ibid.*

⁴⁷ The Ombudsman of New South Wales, "Fact Sheet on Public Interest", https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0014/3713/FS_PSA_16_Public_interest.pdf, accessed 5 November 2015.

⁴⁸ *Ibid.*

⁴⁹ Indonesia, *Undang-Undang tentang Peraturan Dasar Pokok Agraria (Law regarding Basic Agrarian Law)*, UU No. 5 Tahun 1960, LN No. 104 Tahun 1960 (Law Number 5 Year 1960, SG No. 104 Year 1960), art. 6.

⁵⁰ Indonesia, *Undang-Undang tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum (Law regarding Land Procurement for Development in the Public Interest)*, UU. No. 2 Tahun 2012, LN No 22 Tahun 2012 (Law Number 2 Year 2012, SG No. 22 Year 2012), art. 10.

- i. Hospitals, either for central or local government;
- j. Public safety facilities;
- k. Grave yards;
- l. Public facilities, open spaces, and parks;
- m. Natural and cultural heritage;
- n. Public offices;
- o. Rearrangement of slums for the development of rented public housing;
- p. Educational facilities;
- q. Sports facilities; and
- r. Public markets and public parking yards.

To maintain social order, the local government, in this case, the Government of DKI Jakarta, has adopted the local regulation on Social Order No. 8/2007.⁵¹ In a few Articles, this law prohibits people from building houses in public spaces, such as riverbanks, under highways, bridges, parks, and railway tracks.⁵² Failure to comply with these Articles will lead to imprisonment for a maximum of 90 days or a penalty of a maximum of 30 million IDR.⁵³

And, the limitation of the exercise of human rights on behalf of the public interest is enshrined in the Constitution and the Indonesian Human Rights Act. These regulations limit the exercise of one's rights by making individuals responsible for respecting others' interests.⁵⁴ Indeed, the Constitution emphasizes that a limitation of rights could occur aiming to recognize, respect, and fulfill the right and freedom of others; nonetheless, the limitation should be authorized by law and made with due consideration of matters such as morality, security, and public order that prevail in a democratic society.⁵⁵

Importantly, these two rules do not explicitly identify the public interest as a reason for a limitation; nevertheless, the regulations give reference to the matter of public order in a democratic society. Public order means "the conditions of peace, safety, and health that must exist in society and which governments (and other governing bodies) should strive to achieve in order to uphold the constitutional rights of the people and to facilitate that society's harmonious development."⁵⁶ This reference to

⁵¹ Similar regulation also exists in several district and municipalities; due to decentralization, local governments have responsibilities to enact their laws, which should be in line with the Constitution and national regulations.

⁵² Indonesia, DKI Jakarta, *Peraturan Daerah tentang Ketertiban Umum (Local Regulation regarding Public Order)*, Perda No. 8, Year 2007, LD No. 8 Tahun 2007 (Local Regulation of DKI Jakarta Number 8 Year 2007, PG No. 8 Year 2007), arts. 16 (1) and 20.

⁵³ *Ibid.*, art. 61 paras (2) and (3).

⁵⁴ Indonesia, The Indonesian Constitution of 1945, *op. cit.*, art. 28]; see also Indonesia, *Undang-Undang tentang Hak Asasi Manusia (Law regarding Human Rights)*, UU No. 39 Year 1999, LN No. 165 Tahun 1999 (Law No.39 year 1999, SG No. 165 Year 1999), arts. 69 and 70.

⁵⁵ Human Rights Law, *ibid.* arts. 70 and 73.

⁵⁶ French Decree, 22 December 1789, art.2, 9°, as translated by E. Hendrickx and D. Van Ryckeghem, "Conflict in Society: Policing in Partnership? Community Policing and Public Order Policing, an Integrated Approach," Paper presented at the Centre for the Study of Violence and Reconciliation, Seminar No. 4 (24 June 1999), <http://www.csvr.org.za/index.php/publications/1449-conflict-in-society-policing-in-partnership-community-policing-and-public-order-policing-an-integrated-approach.html>, accessed 20 November 2015; as also cited by Mwanawina Ilyayambwa, "When Human Rights Congregate With Public Order Policing: A South African Perspective," *International Journal of Humanities and Social Science* 2, no. 19 (Special Issue – October 2012): 140, http://www.ijhssnet.com/journals/Vol_2_No_19_Special_Issue_October_2012/15.pdf, accessed 20 November 2015.

public order under Indonesian law could be fit in terms of the public interest since it relates to a broader concept of community. Public order is one principle serving as a basis in a community for the development and cohesion of society and, to a certain extent, it links to the idea of the general welfare of a society.

Therefore, it can be concluded that the limitation of human rights based on public interests exists in Indonesian law. Such limitations can be imposed on any other human rights recognized in the Indonesian legal system, including the right to housing. Thus, although a forced eviction could be seen as a violation of one's right to housing, it can be considered lawful so long as it is directed to the satisfaction of general welfare, and carried out according to the guidelines provided by both international standards and, if applicable, domestic law. Finally, a dismissal based on the public interest should not neglect the interests of the affected community; this could be achieved by respecting the principles of forced eviction.

IV. FORCED EVICTIONS IN INDONESIA: AN ISSUE OF LEGALITY

Mass evictions have become a long-standing problem in Indonesia, as has been affirmed by the UN Special Rapporteur on the right to adequate housing in their report on their Special Mission to Indonesia in 2013.⁵⁷ Prior to the UN report, Human Rights Watch also reported and condemned evictions occurring in Indonesia in which armed forces and private parties were often involved and that violated the human rights of the evicted communities.⁵⁸

Jakarta is home to 10 177 900 people⁵⁹ and is the largest and most populous city in Indonesia. As a metropolis city, Jakarta is formed and seen as a segregated city where the rich live in luxurious high-rise apartments while the less fortunate live in immensely unendurable slums. More than 20% of the settlements are slums, where most of the undocumented residents live. These people had lived in the informal settlements for years without any objection from public entities; they had also received government public services such as electricity and to some extent, had also paid taxes. In particular cases, they are allowed to live in the area where they had an agreement with the authorization of state-owned companies, for example in Duri Tambora where the community had a deal with PT KAI, the Indonesian railroad company.⁶⁰ During the visit of the UN Special Rapporteur on the right to adequate housing in 2013, the Rapporteur had been informed that the government planned to evict 200 000 people from riverbanks and slum areas within five years.⁶¹ However, she had apprised the government about the potential harm of the evictions since no alternative accommodation was available for their disposal.

In 2015, approximately two years after the visit, the Government of Jakarta relocated people living on the banks of the Ciliwung River in Kampung Pulo, East Jakarta. This area suffers from flooding every rainy season. Kampung Pulo was blamed for causing floods in the rest of Jakarta, because the activity of the settlements built by the residents had caused sediment build up in the river, which reduced the depth

⁵⁷ Rolnik, *The Report*, para. 56.

⁵⁸ Human Rights Watch, "Condemned Communities Forced Evictions," p. 30.

⁵⁹ As of 2015, data is gathered from the National Statistical Agency, available at <http://www.bps.go.id/linkTabelStatis/view/id/1274>, accessed 20 August 2015.

⁶⁰ Rolnik, *The Report*, p. 16.

⁶¹ *Ibid.*

of the river channel (this being one of the known causes of river flooding). Based on reports in the media, such as the *Jakarta Post*, which interviewed the local people, the proposed eviction had been planned for years but as it was always postponed in the end, people had ceased to take the proposal seriously.⁶² However, in August 2015, more than 1500 households, or around 3400 people, occupying Kampung Pulo in the Jatinegara district were forcibly evicted from their homes.⁶³

The reason the eviction finally took place was that the government's river-revitalization program was commencing. For those people affected by the program, the government had arranged affordable accommodation in other parts of Jatinegara, East Jakarta, 600 meters from Kampung Pulo, which could accommodate approximately 4500 families. While most accepted the offer, some refused it, instead claiming for compensation of the loss of their houses, given that most of the houses on the riverbanks were permanent structures. However, the Governor refused this request and insisted that the community had illegally built their homes on state property (the land); he argued that providing compensation for the evicted would lead to corruption cases. As a result of this disagreement, and blocked Jatinegara Barat Street, triggering traffic congestion in the area. They pushed security officers and tried to stop bulldozers from entering their settlements, and consequently, a clash was unavoidable. Moreover, they threw stones at the officers who then allegedly responded with tear gas. The government deployed police, military, and public order officers armed with water cannons and tear gas to control the crowd. As a result of this riot, 10 people were arrested. The reason behind this resistance was that they were still waiting for the outcome of the lawsuit they had logged at the Court.

Prior to the eviction, the Government of Jakarta had issued several warnings to the community; the third warrant was received on August 6, 2015.⁶⁴ However, on 13th August, the residents filed a lawsuit at the Administrative Court against the East Jakarta Public Order Agency (*Satuan Polisi Pamong Praja*) claiming that the warrant should be dropped.⁶⁵ However, before the Court ruled its judgment, the government had forced people to leave their homes. Following the dismissal, around 417 families had already moved to the low-cost apartments provided by the local government.⁶⁶ This accommodation will later be equipped with shopping houses to facilitate the economic activities of the residents.

In late 2016, the Government of Jakarta once again evicted a large number of people living on the bank of the Ciliwung River, on this occasion in the Bukit Duri Area. Earlier that same year, the government had evicted people living in Kalijodo, North Jakarta, and Pasar Ikan, North Jakarta. Kalijodo was a red-light district in Jakarta that was demolished in February 2016; it will soon be converted to a city park. The victims of the forced evictions in Kalijodo numbered around 1300 households. Only those who had a Jakarta identification card (300 families approximately)

⁶² The Jakarta Post, "Eviction looms for Kampung Pulo locals," *The Jakarta Post* (Mon, April 11 2011), available at <http://www.thejakartapost.com/news/2011/04/11/eviction-looms-kampung-pulo-locals.html>, accessed 20 November 2015.

⁶³ Reporter, "Violent eviction of poor in Kampung Pulo," *The Jakarta Post*.

⁶⁴ The first warrant was on June 11st and the second warrant followed on the 15th of June 2015.

⁶⁵ Reporter, "Kampung Pulo leaders tell residents to keep calm, united," *The Jakarta Post* (20th of August 2015), available at <http://www.thejakartapost.com/news/2015/08/20/kampung-pulo-leaders-tell-residents-keep-calm-united.html>, accessed date 25 August 2016.

⁶⁶ Reporter, "417 Warga Kampung Pulo Telah Tempati Rusun Jatinegara Barat," *Liputan 6* (24th August 2015), available at <http://news.liputan6.com/read/2300652/417-warga-kampung-pulo-telah-tempati-rusun-jatinegara-barat>

were offered alternative temporary housing in the public housing scheme in Rawa Bebek, while the remaining 1000 who had no identification card were left without any solution and consequently were made homeless.⁶⁷ This drove them to build new slums under the highways. Following the Kalijodo eviction, in April 2016, the government evicted people living in slums in the Muara Angke area. The reason behind this eviction relates to the spatial planning of the city in that the area will be used to mitigate and prevent floods during high tide by installing sheet piles on the riverbanks.⁶⁸ In addition, the area will be revitalized for Sunda Kelapa water tourism. Nevertheless, Pasar Ikan, which was home to 1728 households,⁶⁹ had similar stories to tell in that not all of the victims received temporary housing and that they did not receive any compensation. Since April, a number of people affected by the eviction have been living under tents next to their old homes. Some people refused to live in the rented high-rise flats, as there is a great distance between the accommodation and their workplace, and there is no security of tenure. Moreover, a large number of people did not receive any alternative accommodation, due to the lack of subsidized rental properties (*rusunawa*) available for them.⁷⁰ Indeed, the government of Greater Jakarta has provided insufficient accommodation for the community affected by the development⁷¹ and, in any case, it only provides accommodation for people holding a Jakarta identification card.

The latest eviction occurred in the Bukit Duri Area on 28th September 2016 and was carried out by the government while the class action claim proposed by the residents was still under consideration before the District Court of Central Jakarta with the case number No.262/Pdt.G/2016/PN.JKT.Pst. The residents claim that the government acted against the law; hence, the government's actions fall under the tort law that is stipulated in the Civil Code. The government did not wait for the Court to deliver its judgment before carrying out the evictions. The residents stated that they did not receive the third notice that is required by law to be issued in advance of an eviction. Indeed, the law stipulates that eviction notices should be sent on three occasions in advance of the date of eviction. To examine the illegality of the evictions, we should first assess the procedure that was followed by the Government of Jakarta, and then consider the evictions in the light of both international and national law.

In the case of a proposed eviction, international law requires there to be a genuine consultation with the community that will be affected. The Government of Jakarta had conducted several meetings in 2012 with the residents who underwent eviction three years ago, when Joko Widodo was still a governor. After speaking with the residents in Bukit Duri, he offered the solution of a particular type of alternative accommodation that would be compatible with the residents' expressed interest in "*Kampung susun*" (an architectural form of communal housing commonly translated as "stacked village"). Widodo's solution would have enabled the inhabitants to continue to practice their

⁶⁷ Reporter, "3,000 kalijodo Residents to be left homeless," *The Jakarta Post* (17 February 2016), available online at www.thejakartapost.com/news/2016/02/17, accessed date 25 August 2016.

⁶⁸ Reporter, "Pasar Ikan residents resist eviction await compensation," *The Jakarta Post* (18 April 2016), available online at <http://www.thejakartapost.com/news/2016/04/18/pasar-ikan-residents-resist-eviction-await-compensation.html>, accessed date 25 August 2016.

⁶⁹ Reporter, "176 KK di Pasar Ikan Daftarkan Diri untuk Pindah Rusun," *Kompas.com* (6 April 2016), available online at <http://megapolitan.kompas.com/read/2016/04/06/16575621/176.KK.di.Pasar.Ikan.Daftarkan.Diri.untuk.Pindah.Rusun>, accessed date 4 September 2016.

⁷⁰ Gathered from several resources.

⁷¹

daily lives in a spirit of communalism, which would not have been possible in the high-rise flats that are usually offered as accommodation to evictees. The architecture of *Kampung susun* is designed to enable communalism and guarantee that the economic activity of the residents will not be interrupted. At that time, Joko Widodo promised that there would not be an eviction; instead, the idea was that people would move voluntarily. Numerous meetings were also conducted by Governor Basuki Tjahaya Purnama ("Ahok"). He discussed the possibility of compensation for the residents. Eventually, the eviction did transpire, with violence, and without any compensation being given to the residents.

The government does not have a specific procedure regulating the forced evictions process. Instead, it follows a customary practice that involves the government holding a consultation with the affected residents and informing them of the eviction plans by way of three eviction notices (Surat Perintah (SP) I, II, and III). Following the notices, the government issues a demolition order (i.e., the houses and buildings sited on the targeted area). Nevertheless, these customary practices are also often violated. In certain cases, such as the Bukit Duri eviction, residents do not receive the third notice; in the Kalijodo area, the people did not receive official notices but instead a short message system (SMS) from the district head.⁷²

At the national level, the government has adopted regulations for land acquisition in the public interest. These regulations are Law No. 2/2012 on Land Procurement for Development in the Public Interest,⁷³ Presidential Regulation No. 71/2012 on the Land Procurement Process for Development in Public Interests,⁷⁴ and a regulation adopted by the National Land Agency (*Badan Pertanahan Nasional*–BPN) No.5/2012 on Technical Guidance on Land Procurement.⁷⁵ These regulations clearly stipulate procedures and measures that should be followed by the government in acquiring land occupied or owned by individuals, for the sake of the public interest. Such measures range from planning and preparation to execution. In the case of unavoidable evictions, the government must provide compensation for the people if they possess proof of ownership of the land or buildings.⁷⁶ In cases where the inhabitants have no proof but they have been living in the area for several years, witnesses, being two people from the same area, could be sufficient to prove the inhabitant's tenure of the land.⁷⁷ Nonetheless, the Government of Jakarta has a tendency to ignore these regulations, and it did not follow them in the Jakarta eviction cases where the government stated that the residents were squatters who had occupied state land that was not suitable for settlements; hence, these people had to be evicted.

⁷² Reporter, "Pemprov DKI Jakarta Harus Miliki SOP Penggusuran," *CNN Indonesia* (24 August 2015), available online at <http://www.cnnindonesia.com/nasional/20150824190041-20-74186/pemprov-dki-jakarta-harus-miliki-sop-penggusuran/>, accessed date 25 August 2016.

⁷³ Indonesia, *Law regarding Land Procurement for Development in the Public Interest*

⁷⁴ Indonesia, *Peraturan Presiden tentang Penyelenggaraan Pengadaan Tanah Bagi Pembangunan untuk Kepentingan Umum (Presidential Regulation regarding on the Land Procurement Process for Development in Public Interests)*, Perpres No. 71 Tahun 2012, LN No.156 Tahun 2012 (Presidential Regulation Number 71 Year 2012, SG No. 156 Year 2012).

⁷⁵ Indonesia, *Peraturan Kepala Badan Pertanahan Nasional tentang Petunjuk Teknis Pelaksanaan Pengadaan Tanah (Regulation of the Head of the National Land Agency-BPN regarding Technical Guidances for the Implementation of Land Procurement)* Peraturan BPN No. 5 Tahun 2012, 30 October 2012 (Regulation of the Head of the BPN No. 5 Year 2012).

⁷⁶ Indonesia, *Presidential Regulation regarding on the Land Procurement Process for Development in Public Interests*, arts. 23, 24 and 25.

⁷⁷ *Ibid.*, art. 26.

The government-provided affected communities with alternative rented high-rise housing, which rarely occurs in forced evictions of informal settlements.⁷⁸ Nevertheless, the high-rise housing supplied by the government is entirely modern and designed for individuals living privately, which conflicts with the evictees' cultural values of communalism. However, although the preservation of cultural values is not directly addressed in General Comment No. 7 or the Guidance, it becomes a part of the essential elements of the right to adequate housing, *i.e.*, cultural identity, as outlined by the ICESCR in General Comment No. 4.⁷⁹ The evictees' cultural identity does not necessarily reject the modernization of buildings so much as choose traditional and cultural buildings that were designed by and for a communitarian society; nevertheless "modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed."⁸⁰ This condition might be achieved by addressing the buildings targeted for settlements both from material and construction that supported by government policy.⁸¹

The evictions which occurred in Kampung Pulo and Bukit Duri raised three crucial issues. Firstly, when the government carried out the evictions, the complaints brought before the Jakarta Administrative Court and the Central Jakarta Court were still under consideration and the courts had not yet reached their verdicts. By international standards, ignoring legal process is strictly prohibited.⁸² When the Government of Jakarta carried out the evictions, it did not respect the residents' cultural values or the due process of law and in this way it violated the international principles it is bound to uphold. Although the General Comment of the CESCR and the guidelines constitute "soft law," with no binding power as such, UN Member States have accepted the authoritative interpretation of the ICESCR provided by the CESCR and other UN human rights bodies. Consequently, the practices of UN Member States in relation to evictions, based on these documents, may become customary norms. Since Indonesia does not yet have any specific regulations on forced evictions, the government should follow the international standard.

Secondly, the use of force in controlling the crowd was excessive. In the case of the Kampung Pulo eviction, the government used unnecessarily great force in stopping the evictees from attacking the authorities and disrupting the government's demolition of their houses. The disproportionate use of force by the authorities could have been avoided. On one hand, the inhabitants brandished sharpened sticks, threw rocks, formed human barricades, and set tires on fire. But they armed themselves in self-defense and they defended themselves and their homes without the aid of any protective equipment. On the other hand, the officials at the location carried more complex self-defense equipment, such as firearms, knives, and baton sticks. In addition, they had access to tear gas and water cannons. They wore protective helmets, held riot shields for protection, and some wore protective padding. The power of the two parties was imbalanced. As reported by numerous sources in the Indonesian

⁷⁸ Benjamin Davy and Sony Pellissery. "The Citizenship Promise (Un)fulfilled: The Right to Housing in Informal Settings." *International Journal of Social Welfare* 22, iss. 1 (2013): S72. Accessed 30 May 2017. doi: <http://onlinelibrary.wiley.com/doi/10.1111/ijsw.12033/full>.

⁷⁹ United Nations, Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (art. 11 (1) of the Covenant)*, E/1992/23 (13 December 1991), para. 8(g).

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² United Nations, General Assembly, Annex I "Basic Principles and Guidelines on Development-Based Evictions and Displacement", para. 36.

media,⁸³ the government deployed approximately 2200 officers, including members of the Indonesian Army, the police, and the Public Order Institution. This number was disproportionately large compared to the number of the residents, which was only around 300 people.

Neither General Comment No. 7 nor the Guidance specify the manner in which government forces may be deployed during evictions to comply with human rights standards. The only point mentioned in these non-binding laws is that the use of force must be proportional and deployed only if it is necessary and in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials as well as any national or local code of conduct that is consistent with international law and human rights standards.⁸⁴ One of the most important principles in international law is the requirement for the officials, as far as possible, to apply non-violent methods before resorting to the use of force and firearms when carrying out their duty.⁸⁵ Moreover, they may use force and firearms only if other means remain ineffective or are without any promise of achieving the intended result.⁸⁶ As the Indonesian Government has not yet legislated for a particular procedure for evictions, numerous evictions occurred on an involuntary basis and countless instances of violence occurred.⁸⁷

Thirdly, the matter of compensation provided for those who are evicted is of concern. Indonesian legislation states that compensation will only be provided if the evictees can present title deeds of ownership of the targeted land or buildings; yet, almost no inhabitants in urban poor areas possess such a title. Therefore, they are not entitled to receive compensation. However, Article 36 of Law No. 12/2012 stipulates that compensation could be offered in the form of cash, alternative land, resettlement, share ownership, or other forms as agreed upon by the parties. Therefore, providing alternative shelter could also be interpreted as resettlement, which can be categorized as one type of compensation mentioned in Article 36.

In the case of the Kampung Pulo settlement, the houses were built permanently on state land and in areas that are forbidden for settlements. This issue was raised by the government, which based its opinion on both national and local regulations.⁸⁸ However, the government should also consider several other aspects, such as the fact that these residents purchased their houses from other residents, they had been living in Kampung Pulo for a long time, and they built and renovated their houses as they thought that the houses were their assets. The fact that the residents paid taxes for electricity, and other taxes, had made them think that they were not illegal residents. Additionally, the Government of DKI Jakarta should be held responsible for the establishment of shanty towns, particularly for letting the residents live in informal settlements for decades without taking any action to warn or forbid them from living in such areas.

⁸³ For example: *Jakarta Post*, *Kompas*, and *Republika*.

⁸⁴ United Nations, *Report by the UN Special Rapporteur on the right to adequate housing, basic principles and guidelines*, para. 48.

⁸⁵ United Nations, the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Havana, Cuba (27 August to 7 September 1990): para. 4.

⁸⁶ *Ibid.*

⁸⁷ LBH Jakarta, "Saatnya Membuat Regulasi Penggusuran Sesuai dengan Standar HAM: Belum Ada Satupun Peraturan yang Melindungi Warga Tergusur dari Pelanggaran Hak dan Kekerasan," *Risalah Kebijakan* 2 (09 November 2015) p. 3, <http://www.bantuanhukum.or.id/web/wp-content/uploads/2015/11/Risalah-Kebijakan-Regulasi-Penggusuran-Merged.pdf>, accessed 10 December 2015.

⁸⁸ Indonesia, DKI Jakarta Regulation No. 8 of 2007, arts. 12c, 13a, and 20.

In addition, the Jakarta Government did not provide compensation for the affected community in the Kalijodo eviction, which occurred in 2016. Although the residents of Kalijodo had been living in the area for years, they did not possess the proof of ownership stipulated in the national regulations. The government did not recognize the kinds of proofs that the residents did have and refused to provide compensation. In the Kalijodo eviction, similar to the Kampung Pulo eviction, the government-provided temporary accommodation for the inhabitants; however, housing was only provided for residents of Jakarta and no solution was provided for the other residents. They were given the choice either to return to their place of origin or to stay in Jakarta but with no alternative accommodation provided. When private housing is unaffordable, suggesting that impoverished evictees can remain in the city but that they have to do so without receiving any help from the government is definitely not a solution; rather, this will lead to the establishment of new informal settlements which will become vulnerable to eviction threats sooner or later.

As observed, based on the facts discussed above, it is challenging to decide whether or not the evictions which occurred in Jakarta between 2015 and 2016 conformed with the law and other regulations. The fact that the primary reason for the dismissal was the general welfare of all Jakarta residents shows that there was an element of serving the public interest in the decision to go ahead with the evictions. To some extent, genuine consultations were held, although not in the case of every eviction. Other administrative requirements, such as eviction notices, due notices, as well as offers of alternative settlements were not completely fulfilled. All of these procedures taken by the local authorities show that the government did not fully comply with all the standards set at the international level.

I would argue that the evictions were illegal on the basis of there being several negative features present that were noticed at the time of the evacuations. These include zero compensation, excessive violence, and the carrying out of the eviction prior to delivery of the verdicts of the related cases. These issues created an arbitrary nature to the evictions, which indeed led to a violation of the right to housing.⁸⁹

Another essential finding is that the government-provided rented public housing did not accommodate the cultural values of the residents. Moreover, the distribution of the alternative housing created a new problem of discrimination for non-Jakarta citizens. In addition, the lack of participation from the people affected by the development policies has led to the failure of the policy's aims, and has triggered serious damage, both material and non-material. Therefore, in the development of housing policy the government should give more focus to empowering the people that will be directly affected.⁹⁰ In the case of evictions, participation is needed to decide the design of the residents' future houses and their living space, to enable sustainable solutions for the slums and the residents in Jakarta, without ignoring their shared social, cultural, and communal values.

⁸⁹ Davy and Pellissery, "The Citizenship Promise (un)fulfilled," pp. S75–76.

⁹⁰ Komnas Ham, Press Release, "Penggusuran Kampung Pulo, Jatinegara, Jakarta Timur oleh Pemerintah Provinsi DKI Jakarta [The eviction in Kampung Pulo, Jatinegara, East Jakarta by the Jakarta Province Government]", <http://www.komnasham.go.id/sites/default/files/dokumen-siaran-pers/Pers%20Relese%20Penggusuran%20Kampung%20Pulo.pdf>, accessed 1 December 2015.

V. CONCLUSION

Forced evictions in Jakarta have raised certain questions concerning the violation of human rights. For example, the manner in which the evacuation of the Kampung Pulo and Bukit Duri residents from the Ciliwung riverbanks was carried out was partly to blame for the illegality of the evictions. In addition to the discriminatory manner in which shelters were provided for the victims, the supposed due process of the evictions did not fully meet the standard of obligations enshrined both in international and national laws. These include the demolition of buildings while accountability processes are still under consideration. In addition to problems with the due process, there were also concerns over the excessive use of violence deployed to suppress the residents, and the absence of compensation.

Evictions carried out to serve development and public interests, to a certain extent, can be justified by law; however, the affected community's interest must be considered to be a part of the public interest. To reduce the vulnerability of squatters and people living in slums to forced evictions, they should be involved in the planning and development of their environment; this might be a viable solution with many advantages over an eviction. In addition, in the case of a justified eviction, an effective monitoring system should be in place following the eviction, for example, to monitor the development of the evicted area, to ensure that the public interest proclaimed by the government is indeed "public" in nature and is not converted into a "private" interest.

Forced evictions are certainly not a solution to the existence of slums in a metropolitan city such as Jakarta. Mainstreaming transparency, ensuring consultation takes place with residents in city planning, and empowering the city's people will all help to prevent evictions and human rights violations in the future. In the case of unavoidable evictions where there is no standard operating procedure (SOP) available at the local level, the government should comply with the standards enshrined in international or national regulations to minimize human rights violations.

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